

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 BRIGIDO D. SOLIS,

5 Plaintiff,

6 v.

7 KEOLIS RTC,

8 Defendants.

Case No. 2:19-CV-00930-APG-EJY

ORDER

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10 Presently before the Court is Plaintiff Brigido D. Solis' Application to Proceed *In Forma*
11 *Pauperis* (ECF No. 1), filed on May 31, 2019.

12 **I. *In Forma Pauperis* Application**

13 Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability
14 to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in*
15 *forma pauperis* will be granted.

16 **II. Screening the Complaint**

17 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
18 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
19 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted,
20 or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
21 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state
22 a claim under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108, 1112
23 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter,
24 accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556
25 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only dismiss them
26 "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
27 would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,
28 556 U.S. at 678).

1 In considering whether the complaint is sufficient to state a claim, all allegations of material
2 fact are taken as true and construed in the light most favorable to the plaintiff. *Wyer Summit P'ship*
3 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the
4 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide
5 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
6 A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the
7 complaint's deficiencies could not be cured through amendment, a *pro se* plaintiff should be given
8 leave to amend the complaint with notice regarding the complaint's deficiencies. *Cato v. United*
9 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Here, Plaintiff Brigido D. Solis brings a claim that appears to allege race discrimination
11 against Defendant Keolis. Such a claim is likely to fall outside a collective bargaining agreement
12 to which Plaintiff also refers. However, Plaintiff's race discrimination fails to sufficient allege facts
13 upon which relief may be granted pursuant to the standards established in *Iqbal*, 556 U.S. at 679.
14 That is, Plaintiff must demonstrate a plausible claim for relief, which is more than a "mere
15 possibility of misconduct." *Id.* Further, "[a] claim has facial plausibility when the plaintiff pleads
16 factual content that allows the court to draw the reasonable inference that the defendant is liable for
17 the misconduct alleged." *Id.* at 678.

18 The Court therefore will dismiss Plaintiff's complaint without prejudice for the Plaintiff to
19 file an amended complaint.

20 If Plaintiff chooses to file an amended complaint, the document must be titled "Amended
21 Complaint." The amended complaint must contain a short and plain statement of the grounds for
22 the Court's jurisdiction. *See* Fed. R. Civ. P. 8(a)(1). Additionally, the amended complaint must
23 contain a short and plain statement describing the underlying case and Defendant's conduct t hat
24 constitutes discrimination. *See* Fed. R. Civ. P. 8(a)(2). Although the Federal Rules of Civil
25 Procedure adopt a flexible pleading standard, Plaintiff still must give the Defendant Keolis fair
26 notice of the Plaintiff's claims against it and Plaintiff's entitlement to relief.

27 Additionally, Plaintiff is advised that if he files an amended complaint, the original
28 complaint (ECF No. 1-1) no longer serves any function in this case. As such, the amended

1 complaint must be complete in and of itself without reference to prior pleadings or other documents.
2 The Court cannot refer to a prior pleading or other documents to make Plaintiff's amended
3 complaint complete.

4 IT IS THEREFORE ORDERED that Plaintiff's Application for Leave to Proceed *In Forma*
5 *Pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this
6 action. Plaintiff is permitted to maintain this action to conclusion without the necessity of
7 prepayment of any additional fees or costs or the giving of a security for fees or costs. This Order
8 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at
9 government expense.

10 IT IS FURTHER ORDERED that the Clerk of the Court must file Plaintiff's complaint
11 (ECF No. 1-1).

12 IT IS FURTHER ORDERED that the Complaint (ECF No. 1-1) is DISMISSED without
13 prejudice for failure to state a claim upon which relief can be granted, with leave to amend. If
14 Plaintiff chooses to file an amended complaint, Plaintiff must file the amended complaint within 30
15 days from the date of this Order. Failure to comply with this Order will result in a recommendation
16 that this action be dismissed.

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18 DATED THIS 16th day of August, 2019.

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21 ELAYNA J. YOUCHAK
22 United States Magistrate Judge
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